



# Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## DELIVERY - GOODS ORIGINATE OUTSIDE WASHINGTON

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This Excise Tax Bulletin explains the Department's position regarding interstate sales and deliveries as a result of the decision of the Thurston County Superior Court in Paccar v. Department of Revenue, Thurston County Cause No. 91-2-017595-3 (1991). This bulletin applies only to transactions which were completed prior to January 1, 1992, the effective date of WAC 458-20-193.

For transactions occurring after December 31, 1991, taxpayers should be guided exclusively by WAC 458-20-193 in determining the taxability of such transactions, based upon the location where the buyer receives the goods.

Former WAC 458-20-193A and 193B (Rules 193A and 193B) applied to interstate sales of tangible personal property for periods prior to January 1, 1992. Under these rules, the seller was not subject to the B&O tax if the seller delivered the goods outside Washington. Goods which originated outside Washington were considered to have been delivered by the seller into Washington if the for hire carrier transported the goods to a Washington destination at the expense of the seller.

The Department generally considered the seller as having the expense of the shipment when the goods were shipped "freight prepaid" with the seller paying the carrier. "FOB", a term with significance for shipping and Uniform Commercial Code purposes, was not considered determinative in deciding where "risk" actually transferred from the seller to the buyer.

The court concluded that under the very specific facts of PACCAR, the goods were delivered outside Washington. Among those facts were the following:

***ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.***

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1. There was a clear, unambiguous contract which provided that the place of delivery was an out-of-state location.
2. The transaction as finally completed (specifically performed) was completely consistent with the terms of the contract.
3. Purchasers were required to place orders on the seller's standard purchase orders.
4. The purchase orders clearly provided that all sales were "F.O.B. Designated Plant Of Manufacture".
5. The purchase order specifically indicated that all risk of loss passed to the purchaser upon delivery of the goods to the carrier at the designated F.O.B. point.
6. The purchase order provided that if the purchaser failed to provide the seller with shipping instructions then the seller could, at its option, deliver the goods to a carrier and select the routing without liability, or deliver the goods to a place of storage where they would be held at the purchaser's risk and expense.

Although the superior court's decision in PACCAR is binding only on the parties in that case, the Department will allow similar treatment to taxpayers who can establish identical facts. A sales invoice which simply indicates "FOB Out-Of-State Location" is insufficient to assume that delivery occurred outside Washington. As indicated above, in addition to the sales invoice and shipping documents, a taxpayer must establish that its facts are identical to those in PACCAR, including a contract or purchase order which clearly indicates that risk of loss passed to the buyer at a location outside Washington. Actual performance must be consistent with the terms stated on the purchase order and/or contract.